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SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 February 1992, at 3 p.m.

Chairman: Mr. SOLT (Hungary)
later: Mr. WALKER (Australia)

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The meeting was called to order at 3.10 p.m.

STATEMENT BY THE SECRETARY-GENERAL FOR FOREIGN AFFAIRS OF AUSTRIA

1. Mr. KLESTIL (Secretary-General for Foreign Affairs of Austria) said that his country, which for 40 years had bordered by what had been called the "Iron Curtain", could certainly testify to the dramatic changes in international relations in recent years. Those changes provided new opportunities and new challenges for global cooperation, in particular within the framework of the United Nations. At the recent summit meeting of the Security Council convened by the Prime Minister of the United Kingdom, the member countries had discussed, among other things, how the United Nations could render the international system more effective, and had concluded that human rights verification and election monitoring would become increasingly important in United Nations efforts to maintain international peace and security. They had also showed their determination to strengthen the United Nations.

2. Austria had always emphasized that human rights and fundamental freedoms must be regarded as central principles for the institutional evolution of the society of nations. Many societies were reorienting themselves towards broad popular participation in decision-making processes, towards a free-market economy of an ecological and social nature, and towards democracy and political freedom. To Austria, the safeguarding of human rights and fundamental freedoms could not be considered as interference in a country's internal affairs. In its view, there must be an effort to apply that principle at a universal level, but on condition that its sole aim should be to improve the situation of the people concerned, and not to serve political interests.

3. The Commission's mandate was to search for ways and means of making the United Nations system more effective in the protection and promotion of human rights, and it had many achievements to its credit in that respect, since it had been the source of practically all elements of the current international system of human rights protection. After formulating numerous international standards on the basis of the Universal Declaration of Human Rights, the Commission had directed its attention to ensuring their implementation, since many of those standards provided for supervisory committees to monitor implementation by States parties. On the Commission's proposal, working groups and experts had also been established or designated for the same purpose.

4. There were shortcomings in the system, however, since every day brought news of incidents involving serious human rights violations: racial discrimination, disregard for the rights of minorities, torture, disappearances, mass killings and executions. Fortunately, as the world had become increasingly interdependent, knowledge of human rights violations was becoming widespread, prompting reactions by public opinion and Governments. The international community therefore needed to find ways and means of reacting to such incidents faster and more effectively than in the past or, better still, to prevent them from happening at all. To do so, he proposed three areas for action: collection of information, decision-making in the United Nations system, and measures to enhance prevention and remedies.

5. First, concerning information, as international concern for the protection of human rights grew, so did information sources: Governments, international organizations, non-governmental organizations, academic circles and the media all contributed to knowledge of those questions and to raising public awareness. Moreover, in order to enable the international community to react to specific incidents without delay, and on the basis of solid fact-finding, it was essential to receive reliable information quickly. At its most recent session, the General Assembly had adopted a Declaration on Fact-Finding by the United Nations in the field of the Maintenance of International Peace and Security, which enabled the Security Council and the Secretary-General to establish fact-finding missions. The Commission on Human Rights, too, should, by making use of international expertise, be enabled to request specific information on incidents which might involve gross and systematic human rights violations.

6. Secondly, concerning decision-making, he noted that the Commission, which met once a year, had a heavy workload and an ever-increasing amount of information to consult before taking its decisions, and that some of those decisions were therefore taken under considerable pressure of time. During the rest of the year, however, the world did not stand still, and events might require the Commission's attention and action. Delegations might wish to look for ways to enable the Commission to take timely decisions between sessions, on the basis of specific and comprehensive information.

7. Thirdly, it was important to plan preventive action, i.e. measures to prevent the escalation of events constituting serious human rights violations into situations with longer-term implications. Information and timeliness were essential elements of preventive action.

8. In the light of those considerations, he wished to describe an emergency procedure which the Commission might adopt and which had already been outlined by Mr. Alois Mock, the Austrian Minister for Foreign Affairs, at the General Assembly session in September 1991. An emergency mechanism would enable the Commission to react promptly to flagrant and gross violations of human rights and would guarantee closer cooperation between the Commission and the country or countries concerned. Such a mechanism would be complementary to, and function in close cooperation with, existing mechanisms established by the Commission and make use of the experience gained through them. To that end, the Secretary-General should establish and maintain a list of independent experts experienced in various fields of human rights protection. The mechanism would function in the following way: on the written request of any State Member of the United Nations, the Secretary-General should urgently seek the views of member States of the Commission on whether the emergency mechanism should be applied in a given situation. If a majority of member States agreed, the Secretary-General would invite the Bureau of the Commission to establish a group composed of five experts on the basis of equitable geographical distribution. The group of experts should collect information from all appropriate sources and produce a confidential report, to be submitted without delay to the Government concerned to enable it to present observations and comments on any action it had taken or intended to take. The report, as well as any observations or comments, would remain confidential until it was submitted by the Secretary-General for consideration to an

extraordinary meeting of the Commission on Human Rights, if a majority of States members of the Commission agreed. If they did not agree, the report would be submitted by the Secretary-General to the General Assembly or the next regular session of the Commission, whichever took place first.

9. In recent months, Austria had received a great number of very valuable and concrete comments and suggestions from member States of all regional groups represented in the Commission. It had accommodated all those suggestions, for which it thanked those States, and it invited all delegations to continue the dialogue so as to enable the Commission to adopt the proposal for an emergnecy mechanism with undivided support at the current session. All States must unite their efforts to ensure effective protection for fundamental rights and freedoms in all parts of the world, to strengthen those rights in the context of democratization and economic and social development, to spread knowledge of those rights and to assist those in need. Austria hoped that its proposal would contribute to those goals.

RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES (agenda item 18) (continued) (E/CN.4/1992/48 and Corr.1 and 2; E/CN.4/1992/59; E/CN.4/Sub.2/1991/41 and Corr.1; E/CN.4/Sub.2/1991/43)

IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (agenda item 20) (continued) (E/CN.4/1992/52; E/CN.4/1992/65; E/CN.4/1991/56)

10. The CHAIRMAN invited the participants to continue consideration of agenda items 18 and 20.

11. Mr. HAMERMAN (International Progress Organization) said that the Government of the United States had been asked by the Special Rapporteur to comment on charges that Mr. LaRouche, and his association, were being persecuted in that country because of their beliefs (E/CN.4/1992/52, para. 74). The United States Government had so far remained silent on those allegations, a tactic which was usually vigorously condemned, by the United States among the countries, when practised by other countries.

12. The United States had frequently used the United Nations to condemn smaller countries for human rights violations. In well-known instances the United States had even sought sanctions and gone to war against natiens of the South in the name of righting injustices. His organization urged the Commission to open an impartial inquiry concerning Mr. LaRouche, who was being targeted by the United States authorities and was serving a prison sentence, for his political and philosophical beliefs, just as others had been persecuted for their religious beliefs when States had tried to suppress ideas and beliefs they had viewed as threatening.

13. It was essential for the Commission on Human Rights to look with even sharper eyes and act with even greater resolution in the case at hand, given the fact that the abuses in question were occurring in the very country which had long claimed to be the universal model for freedom of expression and belief. The concept of a "new world order" was meaningful only if the basic principles of human rights were enforced equally for a citizen of a small State and for a citizen of a super-Power.

14. Mr. WIRYONO (Indonesia) said that his Government, which was deeply attached to the principle of tolerance, had welcomed the adoption of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. In the context of the implementation of the Declaration, the Special Rapporteur should not confine himself to noting shortcomings, but should also identify the positive features, notably the interrelationships among the various denominations and between religion and the State.

15. In Indonesia, religious freedom had been guaranteed by the Constitution since the founding of the State in 1945. Although 90 per cent of the population were Muslim, the spirit of deliberation and consensus was traditional among Muslims, Hindus, Buddhists and Christians. Thus the terms "majority" and "minority" were not used in the sense in which they were generally understood; everyone in Indonesia was first and foremost Indonesian. The Ministry of Religious Affairs was responsible for the guidance of religious life. It comprised four main Directorates-General, whose task was to give guidance to the Muslim, Catholic, Protestant and Buddhist/Hindu communities and maintain religious harmony and peaceful cohabitation among them. In that connection, emphasis was placed on the importance of education as a means of fostering tolerance and respect among the different religious communities. In the end, tolerance was not just a matter of non-discrimination, but an act of understanding which must come from individuals themselves; the role of the Government was limited to promoting attitudes of tolerance, so as to ensure respect for the various religions and beliefs.

16. It was his delegation's view that the United Nations, and especially the Commission on Human Rights, had a central role to play in advocating religious tolerance at the national level and in inter-State relations.

17. Mr. DIENG (International Federation of Human Rights - International Commission of Jurists) said that the organizations he represented supported the adoption by the Commission of the Sub-Commission's recommendation to hold a "global consultation on the positions and approaches of different religions and beliefs to human rights and fundamental freedoms".

18. His statement would deal with a subject particular to Islam: a document adopted at the Islamic Conference of Foreign Ministers of 45 States Members of the United Nations, entitled "Islamic Declaration of Human Rights". The Declaration was to have been submitted to the Dakar Summit in December 1991, but consideration had fortunately been postponed. Since its adoption could have dire consequences, the International Federation of Human Rights believed that the international community should be alerted to its seriousness.

19. Before the text was examined, three clarifications were necessary: first, displays of religious intolerance and discrimination were quite obviously not specific to any individuals, groups or States claiming to have a certain conception of Islam. Secondly, in Tunis, Cairo, Algiers and Rabat, the International Federation of Human Rights had regularly attended trials to assist Islamic militants tried because of their beliefs and political

affiliations. Thirdly, the International Federation noted that practices and displays of intolerance and religious fanaticism created a distorted image of Islam, which strengthened racist and xenophobic reactions and the fantasies of fear and rejection that were apparent in Western countries.

20. That having been said, the draft Islamic declaration of human rights, as submitted to the Dakar Summit, referred frequently to the Sharia (Islamic law), which often proved to have only remote connections with the spirit and letter of the sacred texts of Islam. Moreover, the Islamic Sharia, which was a product of history, was considered by certain Muslim jurists to be a "law" that essentially had to be adapted to the requirements of modern times, contemporary legal thinking and international legal instruments. The draft declaration was disturbing for the following reasons: first, it seriously called in question the intercultural consensus on which the international legal instruments in the field of human rights were based; secondly, it introduced unacceptable discrimination vis-á-vis both non-Muslims and women, in the name of the defence of human rights; thirdly, it was deliberately restrictive regarding the exercise of certain fundamental rights and freedoms, to the point that some of its basic provisions fell short of the rules of law in force in many Muslim countries; and finally, under cover of the Islamic Sharia, it gave legitimacy to practices - such as corporal punishment - that infringed the integrity and dignity of the human person.

21. He noted in that context that the Congress of the International Federation of Human Rights had adopted a resolution on the rights of women throughout the world. That resolution stressed the need for solidarity with the many forms of struggle by women in Islamic countries, in the face of the rise in conservative and fundamentalist forces, which based their policy on the denial of women's rights to liberty and equality.

22. Convinced that the message of Islam, like that of all religions and unlike the caricature which Islamic fundamentalism made of it, was a message of tolerance, fraternity, justice and hope, the International Federation of Human Rights and the International Commission of Jurists believed that it would be a serious error for the draft Islamic declaration of human rights to be adopted by the Islamic Conference Organization.

23. Mrs. FARHI (International Council of Jewish Women) said that under article 4 of the Declaration referred to in agenda item 20, all States were required to take effective measures to prevent and eliminate discrimination on grounds of religion or belief, and noted that at a time of terrifying resurgence of the hideous spectre of religious and cultural fanaticism, it might be asked whether Governments were implementing that article and taking all necessary measures to deal with that phenomenon.

24. In western Europe, the xenophobic, racist and anti-Semitic far right was gaining ground everywhere, from Sweden to Austria and Germany, from Switzerland to Belgium, France and Italy. In central and eastern Europe - with the possible exception of Bulgaria - none of the countries newly liberated from Marxist totalitarianism had escaped the resurgence of old nationalist and patriotic traditions based on xenophobia and obsessive

anti-Semitism. In Turkey, a country which had prided itself on the harmonious relations between its people and the Jews for five centuries, anti-Semitic publications were springing up containing the old shibboleths about a world Judaeo-Masonic plot.

25. Computer games with the Führer as hero had spread from Austria, Germany and the United States to Japan, a country with no Jews; one of the programmes consisted in invading Poland in under two days, setting up concentration camps there and exterminating as many Jews and gypsies as possible. In the United States, a member of the Ku Klux Klan had recently come close to winning the elections in Louisiana. In South America, Asia and Africa, there were numerous countries where fanaticism largely based on religion or belief was reaching alarming proportions.

26. Yet with the changes that had occurred in eastern Europe, the Gulf war and the announcement of a new world order, it might have been hoped that the world would make its way towards democracy without too many pitfalls. What was the meaning of the compelling and sudden rise of movements motivated by mankind's basest instincts? Could everything be justified by the economic crisis? Her organization would like to point to two examples of the authorities' inertia in the face of the resurgence of extremist movements.

27. In France, Mr. Le Pen's National Front, for which the polls were now predicting nearly 15 per cent of the votes in the regional elections, was never bothered as a political party despite the fact that it unequivocally proclaimed an ideology and pursued goals which no democracy worthy of the name could tolerate: hatred of foreigners and glorification of "pure-blooded" Frenchmen. It was said that Mr. Le Pen had not violated article 4 of the Constitution and would not pose a threat to it, but how could one believe that? It was now a question not of sanctioning words of hatred concerning an individual whenever he uttered them, but of purely and simply banning an anti-democratic political party, i.e. a party which, by definition, provided an outlet for tendencies that could not unite without it. She referred, in support of her views, to article 5 of the International Convenant on Civil and Political Rights, and to article 17 of the European Convention on Human Rights.

28. The second example was Germany, where there had been over 200 desecrations of Jewish cemeteries in 1991. In the East as in the West, anti-Semitism was growing, together with xenophobia and attacks on foreigners. For the first time since the war, far-right-wing organizations were developing a manifestly anti-Semitic strategy, which was generally spread by young people, including organized groups of skinheads who resembled the S.A. of days gone by. Such movements could be more dangerous in Germany than elsewhere, for young Germans were said to have lost their bearings and to be seeking a new identity. But that was exactly the type of reasoning that tended to trivialize the phenomenon dangerously. In short, less than two generations would have sufficed to eliminate the past, however terrible. What other explanation could there be for the fact that the authorities permitted neo-Nazi groups to proclaim their ideas publicly with complete impunity, despite their violence, their flags with the Third Reich emblem, their uniforms, the Hitler salute they had revived and their raucous glorification of the past?

29. Nevertheless, increasingly alarmed by the widespread revival of the bloody ideologies of the inter-war years, those who still knew how to think, writers, philosophers, honest journalists, sincere clerics, men and women for whom democracy had a meaning, were finally sounding the alarm. The crucial question was the following: could democracy be left defenceless in the face of its detractors, must democracy follow its principles to their logical conclusion, even if that meant signing its own death warrant? The International Covenant on Civil and Political Rights and the Declaration under consideration contained clear precepts on all matters relating to discrimination and religious and cultural intolerance. Why wait to put them into practice? Her organization appealed to all Governments, whether or not they had signed the Covenants, and all peoples to show their commitment to the protection of human rights. It was not a service to humanity to trivialize genuinely tragic problems such as intolerance of religions or beliefs. On the contrary, it was more necessary than ever to assess the dangers correctly and acquire the legal and practical means to deal with them.

30. Mr. ROSSI (International Association for the Defence of Religious Liberty) expressed deep gratitude to the Commission on Human Rights and its Special Rapporteur, Mr. d'Almeida Ribeiro, for their untiring efforts in a cause which must be defended with continued zeal. There were still many countries where the right to freedom of thought, conscience and religion was systematically violated, for lack of adequate legislation to protect it and because of intolerance or religious fanaticism, which often resulted from ignorance.

31. Thus in Saudi Arabia, Mauritania and the Sudan, the law itself undermined the right to freedom of religion, since it provided for the death penalty for anyone who abandoned the official State religion; in Iran, Baha'is who refused to renounce their faith were persecuted; in Israel, liberal Jews only partially enjoyed rights that were granted in full to orthodox Jews. Those who abandoned Judaism to convert to another religion lost all their rights as Jews, in particular eligibility under the law on return. The same fate befell the Messianic Jews, who were no longer considered to be Jews because they had recognized Jesus of Nazareth as the Messiah. In Egypt, it was forbidden to proclaim in public a faith other than that of the majority. The Copts in particular had been seriously harassed by Muslim fundamentalists. In China, many believers and members of the clergy were imprisoned or sent to labour camps. In India, confrontations between Muslims and Hindus had left hundreds dead. In Viet Nam, the freedom of religion proclaimed by the State was not respected in practice, and religious worship was governed by the authorities. In Nigeria, there had been violent conflicts between Christians and Muslims in 1991. And, in Algeria, recent events showed that religious extremism could even bring about national and international destabilization. Such examples clearly demonstrated the need to provide legal protection for the right to freedom of religion and the value of an international instrument on the subject having the force of law.

32. In that connection, stress must also be laid on the importance of education in tolerance and respect for others, whatever their religion. Many believers felt that human rights and fundamental freedoms - as recognized by the international community - must be subordinated to the precepts of

their own religious traditions, with which they might at times be in conflict. The freedom to manifest a religion or belief was not absolute; it had limits, which included respect for the freedoms and fundamental rights of others, and in no circumstances should that freedom run counter to the purposes and principles of the United Nations. Religious authorities should therefore conduct a critical review of their theological positions, in order to reconcile them with the requirements of the modern era and respect for all universally-recognized human rights. The United Nations might, in particular, promote the holding of international meetings of representatives of the various religions in order to encourage them to play a full part in the struggle against intolerance and discrimination. The Commission should accordingly approve the Sub-Commission's recommendation concerning the holding of a global consultation on the positions and approaches adopted by different religions to human rights and fundamental freedoms, in which the representatives of all religions would be invited to participate and which would pave the way for the formulation of a binding international instrument on freedom of religion and belief. His organization, for its part, fully supported that recommendation and stressed the need to extend the Special Rapporteur's mandate, whose usefulness was beyond question.

33. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education) said that without tolerance social peace was not possible. The great challenge to the pluralist and multicultural societies of the late twentieth century was to make tolerance and respect for others' universal values. But although the desire for tolerance was widespread, it clashed with fundamentalism and relativism. The fanatical exaltation of religion and indifference were ways of denying others their dignity.

34. It was not enough to proclaim tolerance, in a multicultural and pluralist society; for the different cultures to live and develop together tolerance must also be taught, and it was the State's responsibility to see that that was done. Genuine education in tolerance must not be built on an educational model which systematically left aside moral values, just as it must not be limited to slogans or tend towards politicization of education. The teaching of ethics had been removed from a large number of educational systems on the grounds that it was too complex and difficult. In other cases, a type of education had been designed that removed cultural references and strong philosophical foundations, combining tolerance and relativism. It was essential to be on one's guard against cheap-rate tolerance, which consisted in ignoring all differences and passing over the fundamental questions in silence. Although it was true that ethical and religious pluralism, like multiculturalism, could raise problems, disregarding those problems would not lead to solutions. The danger was in fact such pseudo-tolerance, for that was what gave rise to intolerance and fundamentalism. How was a young person to respect others' beliefs if he learned at school that his religion or beliefs were unimportant? When beliefs or religions were denied any validity, there was a defensive reaction that could lead to fundamentalism. Experts on integration had accurately analysed the situation where, once a minority felt that it could not play its role in society, it rejected all that that society represented; an unrespected group would therefore have all the more appreciation for those aspects of its cultural heritage that differentiated it from the rest of society.

35. His organization believed that education in genuine tolerance must take account of four facts. First, any religion or belief, even the most tolerant, could become intolerant and try to impose itself on others through violence. Consequently, tolerance and respect for others must be more than just an idea: they must manifest themselves in the form of qualities which built an atmosphere of cooperation and benevolence. Secondly, it was essential to distinguish between ideas, i.e. beliefs, religions and ideologies, on the one hand, and individuals, on the other. The intellectual debate turned on ideas and not persons. As Gandhi had so rightly said, an intolerant person remained a person with the same dignity as ourselves. Thirdly, school must transmit values and beliefs in the atmosphere of understanding and respect for others mentioned earlier. What was taught in school must be in harmony with the beliefs of the family community, for children who experienced a conflict between school and the family would incline towards either relativism or fundamentalism. And fourthly, it was important to avoid the more or less forcible integration of quite distinct social groups; that procedure only encouraged extremist positions.

36. Mr. Walker (Australia) took the Chair.

37. Mr. BOS (Baha'i International Community) congratulated the Special Rapporteur, Mr. d'Almeida Ribeiro, on his excellent report (E/CN.4/1992/52), which shed light not only on the various manifestations of religious intolerance throughout the world, but also on their underlying causes. He sincerely hoped that the Commission would renew the Special Rapporteur's mandate. The Baha'is had long shared the Special Rapporteur's conviction that more determined efforts should be made at all levels to combat all forms of discrimination or intolerance, especially when they had deep historic and cultural roots. Believers often found it difficult to admit that they had not discovered the one and only truth and to tolerate other religious beliefs. Such attitudes were largely the product of ignorance, which - as experience had only too clearly shown - bred superstition and perpetuated religious prejudice and animosity. To appreciate the way in which religious diversity could enrich social life, it was obviously necessary to be familiar with other religions, to have access to the sacred texts and, to that end, to be able to read. A fair-minded reading of those texts would reveal nothing to justify the hatred that pitted one religious community against another, but would on the contrary show that there was an extraordinary degree of harmony among them. Regrettably, some sectarian religious leaders dissuaded or discouraged their followers from trying to get to know other religions better or even to understand the deeper meaning of their own teachings, an attitude which fostered prejudice and intolerance. However, the primary purpose of any religion was to establish unity and concord among the peoples of the world. Governments, NGOs and people of good will, who were struggling to bring about a common solution to the various crises of the modern world, were entitled to expect from religious leadership a similar willingness to renounce sectarian interests and dogmas that inhibited the mobilization of humanity's spiritual resources.

38. His organization wished, in conclusion, to thank Mr. d'Almeida Ribeiro for having unceasingly urged States to protect, through constitutional and legal means, the right of their citizens to freedom of religion and belief.

It also supported his call for more efforts to promote greater understanding among all peoples, particularly through inter-faith dialogue and broad dissemination of the principles of the 1981 Declaration, especially in schools and the media. The Baha'i International Community was confident that even deeply-rooted prejudice faded in an environment of humility, compassion and earnest search for truth.

39. Mr. GYATTSEN (International Fellowship of Reconciliation) reminded the Commission that his organization had repeatedly provided the Centre for Human Rights with information on the violations of religious liberty in Tibet and called for measures to be taken to end them. Detailed information on the subject was also provided in the note by the Secretary-General on the situation in Tibet (E/CN.4/1992/37), which would be transmitted to the Commission. The International Fellowship of Reconciliation wished to draw the Commission's attention to the fact that the Chinese Government was now openly engaged in a policy of deliberate destruction of Buddhism in Tibet, as described in Mr. d'Almeida Ribeiro's report (E/CN.4/1992/52). A well-documented report published by Asia Watch a few weeks before also indicated that since 1989 the Chinese Government's crackdown on freedom of religion had intensified in Tibet and in China, where practising a religion could today be considered as a counterrevolutionary activity under the Penal Code. Amnesty International had also reported that numerous monks and nuns were currently imprisoned or detained in "Re-education through labour camps" for having peacefully expressed their beliefs.

40. All Tibetans were suffering from that situation, for they attached very great importance to their religion and their culture, which brought them happiness and had enabled them to keep up their hopes in the most difficult situations. The Tibetan Buddhists had never tried to impose their views on others. They wished to live in peace and brotherhood with the Muslims, of whom there were many in Tibet, and the Christians. Practising a religion was a personal choice, which must be respected as such. Tolerance was essential for the peaceful and free development of any society.

41. Governments and non-governmental organizations must work together to promote better understanding and to improve relations among groups now divided by differences in religious belief and by intolerance. His organization accordingly welcomed the Sub-Commission's recommendation that a global consultation should be held on the positions and approaches of different religions to human rights and fundamental freedoms. The celebration, in 1993, of the one hundredth anniversary of the establishment of the World Parliament of Religions, which would bring together religious representatives from Asia, the Middle East, Europe and the Americas, should also make possible further progress towards mutual respect and understanding.

42. Mr. MILOSEVIC (World Association of World Federalists) said that the cruel war that had torn Yugoslavia apart had forced 200,000 Serbs to leave their homes because their safety in Croatian territory had been threatened. Observance of the Orthodox religion had become impossible, and the Croatian authorities were making every effort to destroy the traces of Serbian presence, pulling down cultural and religious monuments. The methods of the Croatian State were similar to those of the Croatian Ustashi State, which had

ordered 450 Serbian Churches to be destroyed during the Second World War. Over 700,000 Serbs had been exterminated in Croatian concentration camps during that war, and some 270,000 members of the Orthodox Church had been forcibly converted to Catholicism. The Croatian authorities were now trying to annihilate a people's very soul.

43. Having received the mandate of the Serbian Orthodox Church, he would be submitting to the international community a document on the destruction of Serbian religious monuments in Croatia. He appealed to all members of the Commission to take note of the serious threat facing the Serbian people because of its religious beliefs. Countries which lent political support to the Croatian State were aiding and abetting a situation which would inevitably turn Croatia into a concentration camp for the Serbs who had tried to continue living in their territory. If the international community wished to eliminate all forms of religious intolerance, it must give priority consideration to the human rights situation in Croatia and condemn all discriminatory practices in that part of southern Europe.

44. Mrs. SLESZINKA (Christian Democrat International) said that in 1991, following the collapse of many socialist regimes on all continents, freedom of religion and belief had considerably improved throughout the world. In the Muslim countries, however, the situation of religious minorities, in particular the Christians, was steadily deteriorating because of the intensification of the Islamic nature of those States, with the adoption of the Sharia in Sudan and Pakistan for example, the proclamation of Islam as the State religion in Bangladesh and the increase in pro-Islamic pressure. At the beginning of 1992, violations were occuring in a number of States due to national provisions that were in conflict with human rights or to the failure to enforce national legislation that guaranteed equality among citizens.

45. In Greece, the "Metaxa" laws seriously undermined the freedom of the non-Orthodox religions with regard to the construction and opening of places of worship. Under those laws, non-Orthodox believers had received heavy sentences for distributing religious tracts. Other Metaxa laws, voted in under the dictatorship with no parliamentary action, provided for restrictions on the freedom of the non-Orthodox religions and gave rise to serious discrimination against believers in the workplace. The new Greek identity card still contained the heading "Religion", which constituted a breach of an individual's right not to have to state his religion publicly. A Greek representative to the European Parliament had made a written application to the Commission of the European Communities in order to have that discriminatory provision eliminated. Greece was also the only EEC country which did not provide for civilian service in lieu of military service, and 400 Jehovah's Witnesses, who were conscientious objectors, were currently serving four-year prison sentences. The victims in those cases had filed complaints against the Greek State before the European Commission of Human Rights in Strasbourg.

46. In Turkey, a building constructed by the Armenian Church in Kinaki, near Istanbul, had been razed on orders from the Government. During the second half of 1991, over 25 Christians of foreign nationalities had been deported for distributing religious literature in Turkish.

47. Her organization welcomed the release, in Egypt, of three Muslim converts to Christianity, who had been arrested in October 1990. Nevertheless, serious problems persisted in that country with regard to the construction and restoration of places of worship. There was a law, promulgated 135 years before, which stipulated that a church could not be built near a mosque or in a predominantly Muslim area. Thus there had been several interventions by the Egyptian security forces, which had invaded two Copt churches (in Alexandria and Upper Egypt), and terrorized worshippers. Applications for authorization to construct, enlarge, or repair Christian religious buildings were often rejected or ignored.

48. In Iran, after the hanging of Pastor Hossein Soodmand in December 1990, several members of the Protestant clergy had been arrested, imprisoned and tortured. Mention should also be made of the closure of all Christian bookstores, the Iranian Bible Society and several Protestant churches, and the ban on printing religious books in Farsi. In addition, the persistent intimidation campaigns against Muslim converts to Christianity showed no signs of improvement.

49. In Malaysia, translators of the Bible who were of foreign nationality had been expelled and nearly 20 Pentecostal churches were being threatened with closure because they had not received State authorization to conduct their activities. In China, arrests and closures of churches had greatly increased. In Vietnam, several Christians had been released, but four persons had just been arrested and sentenced to three years imprisonment.

50. Now more than ever, freedom of religion was essential to the peaceful organization of tomorrow's world. To help bring that about, national religious legislation should be brought into line with the Universal Declaration of Human Rights, and article 18 of the Declaration should be enforced throughout the world.

51. Mrs. GUZMAN (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that, at its eleventh Congress held in Santiago, Chile, in November 1991, the Federation had decided to participate in all the activities planned by indigenous organizations and peoples as part of the continental campaign commemorating the 500 years of oppression and indigenous, popular and black resistance, and to inform all international bodies of the situation of the indigenous peoples.

52. After reading the report of the Working Group on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities (E/CN.4/1992/48) and the preliminary report submitted by Mr. Eide (E/CN.4/Sub.2/1991/43), she had the impression that the authors of those reports had had difficulty in defining what was meant by a minority. There were in Latin America today numerous peoples who had survived 500 years of Spanish, Portuguese and British colonialism, followed by domination by those weilding economic and political power after the founding of the States of North and South America. Those peoples were currently living in marginal conditions and, contrary to remarks made at a previous meeting, their claims reflected neither frustration nor an attempt at historical justification of their inability to cope with the current situation.

53. When the Latin American nations had been founded, no account had been taken of the existence of indigenous peoples, as attested to by the situation of the Esse-ejja people. At the beginning of the twentieth century, the Esse-ejja nation had been integrated into Bolivian territory; then, during the second decade, the Heath River had been set as the border between Peru and Bolivia, and that people had found itself divided between two countries. Neither the Governments of the time nor the present Governments had had the slightest concern about their survival. The Esse-ejja had violently resisted invasion by the Western Christian world and the civilizing campaigns of the Catholic missions, for which they had been oppressed and sold as slaves. Currently, the Esse-ejja of Peru and Bolivia maintained primarily family-based links among their various communities. In Peru, those communities were Hermosa Grande, Palma Real and Sonene. A commission which had visited Palma Real and Sonene had noted that Palma Real was receiving close attention from the State but was undergoing substantial acculturation. In Bolivia, there was only one community, at Portachuelo, where an American evangelical mission had built a school.

54. Other peoples from different parts of Latin America were in similar situations, and against the background of the adoption of the draft Declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, States must take account of the proposals of the indigenous peoples of Latin America. The second Inter-American Indigenous Congress on Natural Resources and the Environment had been held in Bolivia in 1991. It had emerged from the Congress that indigenous peoples all experienced similar problems regarding the consolidation of their territory, their cultural, political, economic and social recognition by the State, and respect for their identity. It was important for those peoples to be able to be educated in their language and to receive teaching that reflected their own vision of the world. Thus her organization supported the cause of the numerous indigenous peoples of Latin America, all of whom wished to exercise freely their right to self-determination.

55. Mr. SYMONDS (International Indian Treaty Council) said that for the Indian nation, religious intolerance was tantamount to cultural genocide. The Indian people's religion was connected to the land. However, the non-indigenous population of the United States had stolen the lands and resources of the Indians and adopted policies that legitimized those appropriations.

56. Referring to the statement by the representative of the United States on agenda item 20, he said that that country would do better to live up to its own treaty obligations instead of attacking Iran, China and the Sudan. Its promotion of the new world order represented the decline of human rights. The United States based its spiritual inspiration on the economy and the promotion of global markets. In his statement before the Commission, the Vice-President of the United States had proclaimed that national sovereignty and the principle of non-interference in the internal affairs of States could no longer be invoked as a defence. Very well, but who would protect the indigenous peoples' right to religious freedom? After five centuries, the Americans had still not grasped the essential spirituality of the indigenous peoples of the Americas, who were still fighting for their survival and

respect for their fundamental rights. The right to religious freedom set forth in the first amendment to the Constitution of the United States did not apply to American Indians. On 11 August 1978, the American Indian Religious Freedom Act had become law. That law stipulated that it was the United States authorities' duty to protect and preserve the right of Indians, Eskimos, Aleuts and native Hawaiians to have and practise a religion, including access to sites, use and possession of sacred objects, and freedom to worship through traditional rites. However, that law was not respected and numerous lawsuits had been filed following complaints by American Indians concerning the exercise of the right to freedom of religion. In June 1988, representatives of various Indian tribes had undertaken a six-week walk to protest against the commercial exploitation of pipestone, but objects made of pipestone continued to be sold, in violation of the Indians' religious traditions. In addition, the Native American Graves Protection and Repatriation Act, adopted over one year before, had still not been implemented. Graves continued to be desecrated and many ancestors of American Indians were still on display in museums or in the hands of anthropologists. The Indian nation would continue to fight to have the bodies of its ancestors and other sacred property returned to it.

57. The United States authorities had launched a major campaign against indigenous spirituality. He cited various examples concerning the Salish and Kootenai nations, the Nez Percés, the people of Taos Pueblo, the Iowa Tribe of Oklahoma and the San Carlos Apaches, and noted that the authorities were proposing construction projects which did not respect the sacred sites of the Indian people, authorizing the export of Indian artifacts looted from archeological and cultural sites, authorizing low-altitude flights over Indian territories by United States Air Force planes and refusing to return sacred lands to Indian tribes, while non-Indian hikers were allowed to intrude on them. However, the greatest threat to the Indian nation was the nuclear industry. Indian lands were often targeted for dumps, incinerators and landfills for toxic waste. The problem was a serious one, and if the authorities did not regulate the treatment of hazardous wastes on Indian land, environmental catastrophes were inevitable.

58. In conclusion, he informed the Commission of the death of David Sohappy on 6 May 1991. David Sohappy had been the spiritual adviser of the International Indian Treaty Council and a member of its Board of Directors. He had spent 20 months in a federal prison for having sought his spiritual food.

59. Mr. ELKABIR (Observer for the Sudan), speaking in exercise of the right of reply, reminded the Commission that the representative of the United States, in a statement on 7 February concerning agenda item 20, had said he had proof that the Sudanese Government had been attempting to impose the Islamic religion in southern Sudan. Those allegations were untrue, since freedom of religion was guaranteed by law in all provinces of the Sudan. Minorities' rights were clearly established. He also rejected the allegation that admission to university depended on a person's religion. The Government had begun a policy of Arabization which in no way prevented citizens from studying in the institution of their choice.

60. Mr. NWAKAMMA (Nigeria), speaking in exercise of the right of reply, objected to the allegations made by the International Association for the Defence of Religious Liberty concerning agenda item 20. There had never been any cases of religious intolerance or violation of freedom of religion in Nigeria. The Government's policy consisted in promoting the peaceful coexistence of the various religious communities, as attested to by the mixed marriages between Christians and Muslims and the presence of children of different religions in the same schools. Confrontations had been reported between Christians and Muslims in Nigeria, but according to the conclusions of a committee of inquiry established by the Government, religion had not been the reason for those incidents. Human rights were respected in Nigeria.

61. Mr. LEMINE (Mauritania), speaking in exercise of the right of reply, observed that his delegation had already replied to the allegations by the representative of the International Association for the Defence of Religious Liberty in previous statements and had provided the necessary clarifications concerning Mauritanian legislation on freedom of conscience. It had also provided the Special Rapporteur on the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief with all the necessary clarifications. He noted that the representative of the International Association for the Defence of Religious Liberty was completely unfamiliar with the situation in Mauritania in affirming that Islam was the official State religion. It was in fact the religion of the Mauritanian people as a whole. It had not been imposed by the State, but had been institutionalized in the Constitution in order that the Constitution might be approved by the people. He wondered why a State should be criticized for having taken account of the deep and unanimous aspirations of the people when preparing fundamental legal texts. As for the allegation that any Mauritanian renounced the Islamic religion was liable to heavy penalties, there had been no such case so far.

62. Mrs. THI NHA Nguyen (Observer for Vietnam), speaking in exercise of the right of reply, said that Mr. d'Almeida Ribeiro, in his report on the implementation of the Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (E/CN.4/1991/56, para. 86), referred to some very old cases of imprisoned clerics. Similarly, in his statement the representative of the International Association for the Defence of Religious Liberty had accused the Vietnamese Government of infringing citizens' rights to freedom of religion. However, article 68 of the 1980 Constitution of the Socialist Republic of Vietnam stipulated that citizens enjoyed freedom of religion. His Government had always respected that provision. If clerics had been imprisoned, that had not been because of their beliefs, but because they had broken the law. Under the current process of renewal, certain laws had been amended and others would soon be amended to ensure that the Vietnamese people's rights, including the right to freedom of religion, were respected.

63. Mr. ZHAN Daode (China), speaking in exercise of the right of reply, said that the person who claimed to represent the International Fellowship of Reconciliation had made a vicious attack on China and circulated rumours concerning the Chinese Government's policy in Tibet. The so-called

representative was in fact a member of a Tibetan separatist group in exile, which was aiming at dividing China and proclaiming the independence of Tibet. That person's statement was, in his view, a mere footnote to the history of Tibet.

64. Mr. DARATZIKIS (Observer for Greece), speaking in exercise of the right of reply concerning the statement by the representative of Christian Democrat International, said that the Greek Constitution and laws established freedom of religion and conscience and that the exercise of personal rights did not depend on the religion of individuals. Only proselytism was prohibited. He informed the representative of Christian Democrat International that the Greek delegation was at his disposal if he needed additional information.

65. Mrs. Aboul-EZZ Halbouny (Observer for Egypt), speaking in exercise of the right of reply, said that her delegation attached great importance to the participation of non-governmental organizations in the Commission's discussions, as it considered that they had a major role to play in the protection and promotion of human rights. She had thus been all the more surprised by the statements of the representatives of Christian Democrat International and the International Association for the Defence of Religious Liberty, who should have checked their information before taking the floor before the Commission. Freedom of religion was established in the Egyptian Constitution and respected by Egyptian society. No religious community was discriminated against. The Copt population played an active role in all areas, and Copts were to be found in important posts, where they took part in policy formulation and in the decision-making process.

The meeting rose at 5.45 p.m.

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Forty-eighth session

SUMMARY RECORD OF THE 21st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 February 1992, at 10 a.m.

Chairman: Mr. SOLT (Hungary)

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The meeting was called to order at 10.20 a.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 10) (E/CN.4/1992/13-16, 17 and Add.1, 18 and Corr.1 and Add.1, 19/Rev.1, 20, 62 and 63; E/CN.4/1992/NGO/4 and 9; E/CN.4/1991/17, 20 and Add.1; E/CN.4/1991/NGO/22; E/CN.4/Sub.2/1991/9, 26, 28/Rev.1, 29 and 30 and Add.1-4; A/46/46, 618 and Corr.1, 703; A/RES/46/110)

1. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing the agenda item, said that the question of the human rights of all persons subjected to any form of detention or imprisonment ranged in its substance over a wide area of human rights concerns. The focus of the item was on fairness, equity and respect for human dignity in the relationship between the individual, on the one hand, and the law and mechanisms of the State for implementing the law, on the other. That was a constant theme through human history.

2. There was a wide range of specific issues before the Commission under the item and various reports would be presented for consideration. In addition, the general debate and, in particular, the information provided by non-governmental organizations would enable the Commission to review human rights in the administration of justice from a worldwide perspective. The Commission would be able to identify emerging problems and situations of violations which might need prompt attention to prevent them from becoming more serious. Respect for human rights in the administration of justice and such serious problems as torture, disappearances and arbitrary detention constituted one of the barometers of the general health of a society and, as such, merited close attention by the members of the Commission.

3. Respect for human rights in states of emergency had been of concern for a number of years and the Sub-Commission on Prevention of Discrimination and Protection of Minorities had sought to ensure that states of emergency which affected the enjoyment of human rights should be declared in accordance with international standards, and that those standards should be respected during the state of emergency itself. For example, international human rights law placed strict limits on the circumstances in which a state of emergency could be declared and also limited to the minimum any restrictions on the enjoyment of human rights. The Commission had before it the most recent information in that regard in the fourth annual report and a list of States which, since 1 January 1985, had proclaimed, extended or terminated a state of emergency, prepared by the Special Rapporteur, Mr. Despouy (E/CN.4/Sub.2/1991/28).

4. In his opening statement to the Commission, he had expressed his deep concern about the detention of United Nations staff members, an issue to which he had given his active attention for many years. Both the Commission and Sub-Commission had been considering the detention of staff members in recent years and the Commission had before it an updated report on the situation of staff members, experts and their families detained, imprisoned, missing or held in a country against their will, including those cases which had been successfully settled since the presentation of the last report.

5. For its part, the Sub-Commission had invited its Special Rapporteur, Ms. Bautista, to submit to it, at its next session, a final report on those issues which would include practical recommendations for measures to improve on a long-term basis the protection of personnel of the United Nations system and their families, as well as of experts and consultants.

6. Over the years, the Commission had come to realize how important freedom of expression was to the enjoyment of other human rights. It had begun considering that item in 1988 from the standpoint of the detention of persons by reason of their exercise of that right. At its current session, the Commission would have before it a report on the freedom of opinion and expression, the current problems of its realization and on measures necessary for its strengthening and promotion prepared by the Special Rapporteurs, Mr. Joinet and Mr. Türk (E/CN.4/Sub.2/1991/9). Their report studied in detail the measures necessary for the strengthening and promotion of the right to freedom of opinion and expression, including the concept of a democratic society, the relationship between the right to freedom of opinion and expression and the right to freedom of association and peaceful assembly, and the right to take part in government. The range of issues dealt with in that regard had considerably expanded since 1988, and the Commission might wish to consider whether those matters should not be taken up under another agenda item where a broader discussion could be possible.

7. Both the Commission and the Sub-Commission had been giving close attention to means of ensuring respect for the independence of the judiciary and the protection of practising lawyers. At its previous session the Commission had had before it a report on the issue prepared by Mr. Joinet (E/CN.4/Sub.2/1991/30 and Add.1-4). The Sub-Commission had endorsed the report's recommendations and requested Mr. Joinet to prepare for its next session a report bringing to its attention information on practices and measures which had served to strengthen or weaken the independence of the judiciary and the legal profession.

8. The elements necessary for a fair trial and the measures which should be taken to ensure a fair trial were of growing concern to the Commission and the Sub-Commission. In that regard, he drew attention to the report by the Sub-Commission's Special Rapporteurs, Mr. Chernichenko and Mr. Treat entitled "The right to a fair trial: current recognition and measures necessary for its strengthening" (E/CN.4/Sub.2/1991/29).

9. A major step towards the protection of the physical integrity of individuals all over the world had been taken by the Commission the previous year when it had established a Working Group on Arbitrary Detention. That procedure joined those protecting the individual from enforced disappearances,

summary or arbitrary executions and torture. The Working Group had held two sessions since its establishment. At those sessions, the Group had adopted its methods of work, a series of principles applicable in consideration of cases of alleged arbitrary arrest or detention submitted to it, and a questionnaire devised for the presentation of such cases to the Working Group in order to provide it with all details needed for their consideration. The Working Group had also transmitted 159 cases to 16 Governments and taken its first decisions regarding 70 cases on which replies from Governments had been received. In addition, it had identified some particular situations to be further considered at its next session scheduled for March 1992. The report of the Working Group (E/CN.4/1991/20) would be introduced by Mr. Joinet.

10. In 1985, the Commission had decided to establish a Working Group to examine questions relating to torture. The Special Rapporteur, Mr. Kooijmans, had presented each year since then a report to the Commission. As could be seen from his most recent report (E/CN.4/1992/17), the number of incidents and cases processed under that mechanism was on the increase, covering situations in 65 countries. The Special Rapporteur had again used the urgent action procedure in cases in which fear had been expressed that the persons concerned might be subjected to torture. During the period under review, a total of 64 urgent appeals concerning 287 individual cases had been sent. There had also been growing cooperation from Governments, which had provided replies on 30 per cent of the cases transmitted in 1991. The addendum to the report (E/CN.4/1992/17/Add.1) contained an account of the visit the Special Rapporteur had paid to Indonesia in November 1991. As in previous years, the report would be introduced by the Special Rapporteur.

11. The Commission also had before it a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, submitted by Costa Rica. The purpose of the draft text was to establish a system of visits to places of detention as part of the Commission's efforts to prevent torture and ill-treatment of detainees. In 1991, Costa Rica had submitted a revised text to the Commission, which had decided to consider it at the current session in the light of the comments made by Governments.

12. In 1980, the Commission had established the Working Group on Enforced or Involuntary Disappearances, which represented the first thematic instrument set up to examine questions concerning particularly serious human rights violations. Since its establishment, the individual cases transmitted to the Working Group had amounted to 25,000 and the number of cases submitted each year for its consideration continued to increase. It was also important to point out that, during the past year alone, the Group had received some 17,000 individual cases and transmitted 4,800 new cases, of which 330 had been sent under the urgent action procedure.

13. In 1991, the Working Group had accepted an invitation to visit Sri Lanka, and the Commission had before it the report on that visit in the addendum to the report on the Group's activities (E/CN.4/1992/18/Add.1). The Working Group had examined the issue of disappearances in the context in which they had taken place, considering national legislation as well as institutions and practices which could have had an effect on the phenomenon of disappearances in Sri Lanka. Mr. Tosevski, Chairman of the Working Group, would introduce that report in person.

14. As a result of the reports of the Working Group and the remarkable activities of many non-governmental organizations, the international community had realized that enforced or involuntary disappearances constituted extremely serious violations of human rights which threatened not only the victims but also society as a whole. The proposal had been made on a number of occasions that the international community should take the necessary steps to prevent disappearances and establish various degrees of responsibility by adopting a draft declaration.

15. In 1991, following an in-depth examination, the Sub-Commission had submitted for the consideration of the Commission a draft declaration on disappearances and a Working Group to revise the text of that draft declaration had been established within the Commission. In December 1991, the Working Group in question had held a meeting and Mrs. le Fraper du Hellen, Chairman-Rapporteur, would introduce its report (E/CN.4/1992/19).

16. In 1984, the General Assembly had adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which 64 States parties had so far acceded. The Commission had before it the report on the status of the Convention (E/CN.4/1992/15).

17. To date, the Committee against Torture had held seven sessions; in 1991, in the course of its two most recent sessions, the Committee had examined the initial reports submitted by eight States parties as well as additional reports transmitted by three other States. The Committee had also examined various ways of participating in the Preparatory Committee for the World Conference on Human Rights and had taken steps to increase its cooperation with the United Nations Voluntary Fund for Victims of Torture. The Committee had adopted some general principles concerning the form and the content of the periodic reports which States parties would have to submit. Lastly, it had continued its fruitful collaboration with the Special Rapporteur on questions relevant to torture.

18. The Secretariat received daily reports that torture had been practised or was being practised in various countries on all the continents and that there was a constant increase in the number of victims requiring assistance to cope with the effects of torture on their bodies or their minds; those painful consequences could last for years after the acts had been committed and require lengthy treatment. In December 1991, the General Assembly had itself expressed concern at the fact that the practice of torture and other cruel, inhuman or degrading treatment continued to be widespread.

19. It was for that reason that, in 1981, the Assembly had established the United Nations Voluntary Fund for Victims of Torture to make it possible, through the voluntary contributions of Governments, non-governmental organizations and individuals, to provide to the organizations specializing in the treatment of victims of torture the assistance which was required. The Commission, by its resolution 1991/36, had appealed to Governments, organizations and individuals to respond favourably to requests for contributions to the Fund, if possible on a regular basis, and had asked the Secretary-General to keep it informed of the operations of the Fund. In connection with that agenda item, the Commission had before it the reports of the Secretary-General to the General Assembly (A/46/618) and to the Commission (E/CN.4/1992/16).

20. Since the publication of the report to the Commission, France had made its eleventh annual contribution to the Fund, amounting to $US 55,555, while, on 30 January 1992, the United Kingdom had pledged a fifth voluntary contribution to the Fund of £25,000, and, on 7 February 1992, the United States had contributed a sum of $US 388,000.

21. Mr. JOINET (Chairman/Rapporteur of the Working Group on Arbitrary Detention), introducing the report of the Group (E/CN.4/1992/20), recalled that the Commission had established the Group at its forty-seventh session. The Working Group was made up of five members, including a Chairman and Vice-Chairman, and had held two sessions in September and December. In view of the very recent establishment of the Working Group and the fact that it had held its first session in September 1991 only, its report should be regarded as a preliminary one confined to indicating its views on its mandate, its working methods, the standards applicable in the consideration of cases and its initial activities.

22. As for its mandate, the Working Group took the view that, while its task was similar to that of the other working groups or special rapporteurs, it also included a number of specific characteristics. First of all, in the case of the existing special procedures, the protection applied to rights which could not be derogated from, in that enforced or involuntary disappearances or torture were violations of human rights that were prohibited in all circumstances. Detention, however, implied a restriction on freedom of movement, a limitation which was accepted and of which only the abuse was prohibited. The problem for the Working Group was therefore one of verifying not the existence of detention, but whether it was legal or not. Secondly, it was the duty of the Working Group not only to obtain information about a given situation, but also to investigate the cases of detention. Thirdly, the Working Group had the task of examining the manner in which national legislation was applied and, where appropriate, of ensuring its conformity with accepted international instruments.

23. With regard to the Group's methods of work, when a communication was received through the Centre for Human Rights, the latter sent a questionnaire to the source for the purpose of checking the seriousness of the communication. The communication was then sent to the Government concerned through its Permanent Representative to the United Nations at Geneva. If there was no response from the Government within 90 days, the Working Group could take a decision on the basis of all the information in its possession. If the reply was received within that period, the Working Group then transmitted the response to the source for its final comments.

24. The Working Group was then in a position to take a decision based on a number of criteria: if the person had been released, the case was closed; if the Working Group considered that the detention was not arbitrary in nature, the case was also closed; if the Working Group considered that it had insufficient information, the case remained under study; but if the arbitrary nature of the detention was established, the Working Group sent its recommendations to the Governments concerned and reported to the Commission at its next session. It should also be noted that the Group had established an urgent action procedure.

25. With regard to the evaluation of standards, he said that, for a communication to be admissible, the Working Group considered that the allegations should fall into one of the following three categories: cases in which it was manifestly impossible to link the detention to any legal basis; cases involving detention resulting from the exercise of rights protected by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; and cases in which the non-observance of standards relating to the right to a fair trial was such that it conferred an arbitrary character on the detention.

26. In addition to the Declaration and the Covenant, which it mentioned explicitly, resolution 1991/42 also referred to the relevant international standards set forth in the relevant international legal instruments accepted by the States concerned. Consequently, the Working Group was using as a relevant standard the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

27. With regard to the first initiatives of the Working Group, 24 Governments had been requested to provide information, and 8 had already submitted replies, which had usually been constructive. Those replies had been transmitted to the sources of information. In one case, the Permanent Representative of the country concerned had been heard.

28. When examining cases that had already been referred to it, the Working Group had decided to postpone certain situations for subsequent consideration in order to determine whether or not they fell within its mandate. The situations in question were described in paragraph 23 of the report.

29. Mr. KOOIJMANS (Special Rapporteur on questions relevant to torture), introducing his report (E/CN.4/1992/17 and Add.1), said that, in spite of the fact that the winds of change were blowing all over the world and promising democratization processes had set in in a number of countries, torture remained a disturbingly common phenomenon. There were still too many States where the structure of society and the legal and institutional framework were not strong enough to form a bulwark against the occurrence of torture. Therefore, he had stressed in chapter 5 of the report the important role which the judiciary could and should play in combating torture.

30. All too often, torture was regarded as an act which concerned mainly the executive branch of the Government. Important though the role of the Executive was, the role of the other branches of Government in the eradication of torture was no less important. Parliaments could use their power of control and supervision to persuade the Executive strictly to comply with the absolute ban on torture and should make use of their legislative powers to bring national legislation into line with international standards.

31. However, of even greater importance was the role of the judiciary, since it could provide immediate relief in various ways and redress in individual cases. If the judiciary assumed that responsibility, it would make the use of torture unrewarding and thereby contribute effectively to its disappearance. Under certain circumstances, it might be difficult for members of the judiciary to adhere to the oath they had sworn to apply the rule of law. For

that reason, each and every member of the judiciary should be supported by the whole of the judicial profession if he was victimized by the authorities on account of a decision which displeased them.

32. If the judiciary as a whole recognized that the principle of independence required it to ensure that the rights of parties were respected, such regrettable incidents simply could not happen. Since the use of torture was explicitly forbidden in all national legislation, no member of the judiciary could use his legally prescribed passive role as a shield once he had come to the conclusion that torture had been practised. In carrying out its proper function, the judiciary could play an inestimable role, even more in the prevention of torture than in its suppression.

33. Another preventive measure of great importance was currently under consideration in the Commission, namely the establishment of a system of periodic visits to places of detention by independent experts. The Commission was currently in a position to avail itself of the experience of a similar system established within the context of the Council of Europe. Since his report had been completed, the Government of the United Kingdom had followed the examples of those of Austria and Denmark in deciding to make public the Committee's report on the visits paid to its establishments. It might well take some years before agreement could be reached on a protocol to the Convention, by which time abundant material would be available about the European Committee's work, and the drafting process should not be deferred in the meantime. The intention behind the draft was not to provide for a formal procedure or draw up an indictment, but to ensure that Governments could engage in a constructive dialogue with an international body. Reports on visits would be confidential, unless Governments themselves agreed to their publication.

34. He had taken note with great interest of the report of the Working Group on Arbitrary Detention (E/CN.4/1992/20) which mentioned that the Working Group had established an urgent action procedure to be used if there were credible allegations that a person had been arbitrarily detained and that the continuation of that detention might entail serious danger for his health or life. Since such a procedure might well lead to an overlap with the urgent appeals sent under his own mandate, he welcomed the Working Group's willingness to coordinate its work with other international mechanisms.

35. A recent general recommendation of the Committee on the Elimination of Discrimination Against Women had stated that gender-based violence which impaired or nullified enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions constituted discrimination within the meaning of article 1 of the specific Convention. Since it was clear that rape or other forms of sexual assault against women held in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constituted an act of torture. In a number of cases he had brought allegations regarding such acts to the attention of the Government concerned. He intended to make contacts with the Committee on the Elimination of Discrimination Against Women for an exchange of information in order to combat that practice more effectively.

36. He was grateful to the Government of Indonesia for its invitation to visit that country. Reports on such visits inevitably contained critical remarks and he hoped that they would be seen by Governments as a genuine effort to help them to combat the phenomenon of torture and that the recommendations made would be acted upon.

37. In that context, he was pleased to inform the Commission that the Government of Guatemala had furnished a document containing a list of measures it had taken to improve the human rights situation in that country, some of which were based on the recommendations he had made in his 1990 report on his visit to Guatemala. The contents of that document would be reflected in his next report.

38. It was unfortunate that, due to a delay in communications, it had been impossible for him to visit Djibouti at the invitation of the Government of that country for an on-the-spot investigation of a number of allegations he had brought to the Government's attention. Since his mandate would expire at the end of the Commission's current session, new arrangements could be made only when the mandate had been extended.

39. Allegations could be transmitted to Governments only if the information provided was sufficiently precise and detailed, a condition which was frequently unfulfilled. Standard forms had recently been prepared for communicating all the relevant data required for handling a communication, and they would certainly contribute to the effectiveness of the Commission's mechanisms.

40. Since the finalization of his report, urgent appeals have been sent to the following countries: two to Cameroon, one to China, one to Egypt, two to Haiti, one to India, one to Sudan and two to Syria. He had also, since finalizing the report, received replies from the Governments of the following countries: Egypt, Greece, Spain, Sudan (two replies) and Turkey (four replies). The contents of those replies would also be reflected in the next report.

41. To conclude, he wished to express his sincere regret that, as a result of an unfortunate oversight, the impression was given in paragraph 235 of the report that the Government of Tunisia had not reacted to all the allegations transmitted to it. In fact, that Government had provided information on all cases brought to its attention. Since it was not possible to publish a corrigendum to the report before the end of the current session of the Commission, the contents of those replies would be reflected in the 1993 report.

42. Mr. TOSEVSKI (Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances) said that the activities of the Working Group had become known to an increasing number of organizations, throughout the world, which were addressing their communications to it. Its report (E/CN.4/1992/18 and Corr.1 and Add.1) contained a list of organizations which had contacted the Working Group for the first time in the past two years. As a consequence of that wider awareness, the Working Group had recently received an unprecedented number of cases. It had transmitted almost 5,000 new cases, but still had a backlog of approximately 14,000 cases which it had been unable to transmit owing to its limited resources.

43. The report illustrated the implementation by the Working Group of various resolutions of the Commission, including resolutions 1991/70 and 1991/31. Close follow-up of the progress made by Governments in their investigations had been made possible by the computerized database built up by the Working Group during the 12 years of its existence.

44. In addition, the Working Group had dealt with the question of disappearances at a general level, trying to establish why they occurred, how they could be prevented and how they could be eliminated. It had also considered that question in relation to individual countries, and had accordingly developed active cooperation with all the Governments concerned. It was to be noted that the willingness of those Governments to respond to the Working Group's requests for information had increased year by year, and some Governments had invited the Working Group to visit their countries, thus enabling it to obtain first-hand information. In October 1991, for example, three members of the Working Group had visited Sri Lanka, where they had received full cooperation from the authorities and from numerous organizations and private individuals. The report on the visit was before the Commission (E/CN.4/1992/18/Add.1).

45. The improved cooperation extended by Governments was demonstrated not only by the more numerous replies on individual cases, but also by the replies received from Governments of countries that had received the Group in previous years, all of which had informed the Working Group about the implementation of its recommendations. It was encouraging to note that, in the Philippines, a recommendation made by the Working Group concerning the need to strengthen the supremacy of the civilian courts over the military courts had been implemented by repealing certain Presidential Decrees and that its recommendation on the release from custody of detainees had been regulated by an agreement between the Philippine Commission on Human Rights and the Department of National Defence, thus ensuring that such releases were carried out properly and preventing the occurrence of disappearances.

46. The Government of Peru had also implemented one of the Working Group's recommendations by enacting a decree which authorized access to military installations and police detention centres by officials of the Office of the Attorney-General in all emergency areas throughout the country, to verify the situation of persons who had been detained or reported missing.

47. The Government of Colombia had reported that the new Constitution, which came into force in July 1991, gave special attention to the principle of due process, introduced the remedies of habeas corpus and fundamental rights and reinforced the investigative powers of the Office of the Attorney-General. Colombia had also made particular efforts to dismantle the so-called paramilitary groups operating within its territory, as recommended by the Working Group.

48. Positive developments had also taken place in Argentina, Chile and Honduras, where the number of disappearances had been considerable in the past, and where the practice had since ceased. Other countries had applied measures to diminish the practice, raising hopes that it would be eliminated. Institutions such as the National Human Rights Commission, established by the

Government of Mexico, constituted an effective tool and indicated that the Mexican Government was seriously engaged in preventing impunity in cases of violations of human rights.

49. Important information and statements had been sent by a number of Governments after the completion of the Working Group's report. They included information from the Government of Brazil that the exhumation and examination by forensic experts of corpses found in unmarked graves in the cemetery of Perus had led to the clarification of two cases of disappearance among those transmitted to the Government by the Working Group, and that more cases would be elucidated through the gradual disclosure of the records of former security services.

50. Additional information had also been received from the Government of Colombia in relation to measures taken by that Government to implement the Working Group's recommendations following its visit to Colombia, and from the Government of India providing a reply to allegations by non-governmental organizations. The Indian Government had stressed its deep commitment to democracy and the rule of law and had outlined its efforts to investigate cases of disappearance, giving an assurance that cooperation with the Working Group would continue. A letter had also been received from the Government of the Islamic Republic of Iran supporting the Working Group's efforts and containing an assurance that Iran would assist the United Nations organs in resolving cases of disappearance.

51. In conclusion, he wished to draw attention to a change in the format of the report. The Working Group had decided to include South Africa as a sub-chapter among the other country sub-chapters, rather than as a separate chapter as in previous reports, and to eliminate the mention of Namibia from the title. That decision had been taken in view of the independence of Namibia and the fact that the reports received on cases which had occurred within Namibian territory indicated that South African officials had been responsible for the disappearances, since they had occurred before independence.

52. Mrs. le FRAPER du HELLEN (Chairman-Rapporteur of the Working Group on the Declaration on the protection of all persons from enforced disappearance) said that Economic and Social Council resolution 1991/27 had authorized the Working Group to meet for two weeks prior to the forty-eighth session of the Commission. The Group had accordingly met in October and November 1991 to consider the draft Declaration in greater depth and to transmit a final text to the Commission with a view to its adoption. The Working Group's report was contained in document E/CN.4/1991/19/Rev.1.

53. Paying tribute to the spirit of cooperation that had prevailed in the Working Group in its efforts to achieve a consensus on a text, she said that all the participants, despite widely varying legal approaches and experience, had shown themselves aware of the urgency of their task. That urgency reflected the tragic continuance of the phenomenon of enforced or involuntary disappearances and the concern that the United Nations should be able, for the first time, to affirm in a solemn Declaration, the seriousness of the problem.

54. The first part of the report outlined the organization of work and the difficulties encountered by its members regarding certain provisions of the proposed Declaration. Those difficulties had, however, been approached constructively in the discussion of the text. In the second part of the document, the annex, which contained the actual provisions of the draft Declaration, particular attention had been paid to ensuring that those responsible for such grave violations of human rights did not go unpunished, and that the rights of the families and children of persons who had disappeared were properly taken into account. Due attention had been paid to the existing relevant international instruments. The resulting text drew added weight from the difficulties surmounted in the course of its preparation.

55. Mr. NZEYIMANA (Burundi) said that, in every country, respect for the human rights of detained or imprisoned persons was a yardstick by which the enjoyment of civil and political rights could be measured. Inhuman or degrading treatment of detained persons was a denial of their fundamental human rights. Such rights, however, must be exercised in conditions that were prescribed by the law and compatible with public order and national security.

56. Many countries faced the challenge of reconciling respect for human rights with the maintenance of public order and stability. Indeed, human rights could not be guaranteed by a State which was unable to maintain public order. It was for the legal and institutional system of the country concerned, to determine to what extent the exercise of individual rights and freedoms was compatible with national security and public order but the criteria for such determination must be consistent with the principles set forth in the Universal Declaration of Human Rights.

57. An interesting example of that dilemma had occurred in his country in July 1991 when, following an unauthorized strike and public demonstration during which considerable damage had been done to private property, his Government had been urged to suppress the demonstration by force. Instead, the Government had listened to human rights groups and had charged only those persons identified as having damaged private property, without punishing persons for exercising the right to demonstrate, even if there had been no authorization. Moreover, the Government had shortly afterwards brought its national legislation on public demonstrations into line with the provisions of the Universal Declaration. That experience showed that the current Government of Burundi had made considerable progress in promoting freedom of opinion in its various forms. Indeed, since 1987, hardly anyone had been detained for offences of opinion.

58. The period of political pluralism that was currently dawning in Burundi could lead, however, to situations of conflict between the Government and citizens over the exercise of political rights, but his Government hoped to handle that difficult phase of democracy with wisdom, maturity and responsibility.

59. On the subject of pre-trial detention, there was a regrettable tendency on the part of low-level judicial police officers in Burundi to hold persons in custody for excessively long periods. While it was true that abuses in that area were the result of outdated colonial legislation and the shortage of examining magistrates, the Government was preparing stricter legislation on

the applicability and duration of pre-trial detention. Training courses for police officers in the field of human rights had also been organized during 1991 with the particular intention of encouraging the use of more scientific methods than physical violence when interrogating arrested persons. While torture, as such, was rare in Burindi, instances of police brutality were all too common.

60. The human rights situation of detained or imprisoned persons in Burundi was generally favourable. As in many other developing countries, an improvement in the situation would depend on the increased availability of material resources. In view of the current political upheaval on the continent as a whole, the general situation in Africa was rather more complex. Genuine democratic Governments must show maturity, actors on the political scene must show responsibility, and opposition forces must adopt an appropriate role.

61. Mr. BODDENS-HOSANG (Netherlands) said that the recommendations on the subject of detention and executions, as formulated by the Working Group on Enforced or Involuntary Disappearances and other thematic mechanisms over the previous decade, could be divided into three categories: standard-setting, prevention and monitoring of implementation, and post-violation action, the safety of relatives and human rights defenders, and the responsibility of Governments.

62. As far as standard-setting was concerned, the Working Group had stressed the importance of the ratification of human rights treaties, the setting of new standards and compliance with existing codes. It had also made several proposals for new rules, such as declaring incommunicado detention to be illegal, since many alleged cases of torture took place during such detention. The Special Rapporteur on summary or arbitrary executions had mentioned the need to develop international standards aimed at ensuring that all suspicious deaths were investigated, particularly those at the hands of law enforcement agencies. Death in all types of custody should be regarded, prima facie as a summary or arbitrary execution. The Special Rapporteur had also stated that further standard-setting work was needed to clarify the conduct of law enforcement agencies during events such as demonstrations and riots, to define the powers of arrest, and to establish safeguards against the use of torture to obtain statements. In the field of standard-setting also, his delegation welcomed the draft declaration on the protection of all persons from enforced disappearance, which contained an international legal definition of enforced or involuntary disappearance.

63. The thematic reports considered the monitoring of the implementation of standards and of prevention policies to be the task of various bodies, including Governments, independent committees and the Commission on Human Rights. In his report, the Special Rapporteur on questions relevant to Torture focused on practical measures to monitor the treatment of detainees. Arguing that incommunicado detention was conducive to torture, he had proposed that the monitoring of detainees should be improved by rules that interrogation should take place only at official interrogation centres, that all interrogation sessions should be recorded, and that the identity of all those present should be revealed in the records. Moreover, evidence obtained from the detainee elsewhere and not confirmed during interrogation at an

official centre should not be admitted as evidence in court. The Special Rapporteur had also stressed the right of an arrested person to have prompt access to legal counsel and to have his or her relatives informed.

64. The recommendations addressed the question of training, education and publicity as being crucial for creating awareness of human rights norms and establishing the right climate for the prevention of abuses. Such training, however, could only have medium- and long-term effects and could not be considered as a substitute for concrete short-term action to clarify pending cases of disappearance.

65. As for the third category of recommendations - post-violation action, the safety of relatives and human rights defenders, and the responsibility of Governments - the only after-care possible for the victims of certain human rights abuses was making the causes of death publicly known. Victims should be entitled to file a complaint about torture or maltreatment with an independent authority and to be compensated.

66. Relatives of victims of human rights abuses and those who devoted themselves to the cause of human rights were often themselves in danger and should therefore be well protected. The Working Group on Enforced or Involuntary Disappearances had, accordingly, requested the Commission to condemn the practice of violating the rights of relatives of missing persons. Evidence had shown the devastating impact of fear on the victim, on the family, and on society, where such fear prevented the action needed to bring disappearances to an end.

67. The Working Group on Enforced or Involuntary Disappearances had concluded that impunity was a major contributing factor to the phenomenon of disappearances and that military courts contributed significantly to impunity. His delegation shared the view of the Special Rapporteur on questions relevant to torture that there should be no room for impunity and that, whenever a person was found to be responsible for acts of torture or severe maltreatment he should be brought to trial and, if found guilty, severely punished.

68. Turning to the question of the responsibility of Governments, he noted that violations of human rights were not limited to certain political or social systems. Indeed, no State was wholly immune from torture, since torture could occur anywhere in which a man had complete power over his fellow. Nevertheless, certain situations were clearly conducive to human rights violations. Governments should therefore seek to promote human rights and freedoms and regulate situations where human beings exercised power over other human beings.

69. Since Governments had the ultimate responsibility for what happened within a country's borders, they were primarily responsible not only for their own policies but also for the introduction of such practices as enforced disappearances into society as a whole. It was precisely because of that responsibility of Governments that it was necessary to draw the Commission's attention once again to the important recommendations of the thematic mechanisms and to the need to cooperate fully with those mechanisms.

70. Mr. OYARCE (Chile) said he regretted the fact that the report of the Special Rapporteur on questions relevant to torture had failed to mention the views expressed by the Committee against Torture on Chile, a country which had just recovered its freedom. The Committee had praised the Government of Chile for its efforts to observe the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and had taken note of the country's remarkable progress in promoting respect for human rights and the steps it had taken to ensure that torture no longer constituted a moral, legal or political problem.

71. On the question of arbitrary detention, the criteria used by the Working Group on the subject to determine the admissibility of cases were based on principles which would serve as a guide both for those lodging complaints and for the Governments concerned. Resolution 1991/42 gave the Working Group the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the standards established in the relevant international instruments. In view of the nature of the mandate contained in the resolution, the exhaustion of all domestic recourses was not a condition for the admissibility of a complaint and, accordingly, the Working Group was empowered to proceed promptly with the investigation of the cases submitted to it.

72. The Working Group had also given consideration to the international standards to be used in determining whether a detention was arbitrary or not. Those standards were clearly set forth in resolution 1991/42, which made reference to the Universal Declaration of Human Rights and relevant international standards set forth in other international instruments accepted by the States concerned.

73. Where there was incompatibility between domestic legislation and the provisions of the Universal Declaration, the Working Group was required to adhere to the relevant international standards. Failure to do so would be to create a situation in which domestic legislation could nullify the most cherished precepts developed by the community of nations to protect the rights of individuals. Nevertheless, the principles elaborated by the Working Group could not be used to apply to a State instruments which it had not ratified.

74. With reference to the complaints concerning three cases of arbitrary detention in Chile, contained in the report of the Working Group, he wished to state that one of the three individuals had been released by a decision of the President of the Republic. The other two cases, however, had originated in trials commenced during the military dictatorship and which, despite the new legislation enacted by the President of the Republic to accelerate such proceedings, had still not been completed. While his Government shared the concern of the Working Group, the President of the Republic was not empowered to release persons who were detained by judicial order and whose trial was still incomplete.

75. The phenomenon of enforced or involuntary disappearances was one that struck at the very heart and conscience of society. In Chile, the pain of that experience had been a determining factor in the priority which the Government attached to the approval of the draft declaration on enforced or involuntary disappearances. Chile understood the draft declaration as a homage to the thousands of persons who had disappeared and to the

non-governmental organizations, particularly those in Latin America, which had laboured tirelessly to give a voice and a message to the victims. While parts of the text might be subject to different legal interpretations, the document was clearly an ethical and political one, which complemented the Universal Declaration of Human Rights and which no court could disregard.

76. The draft declaration considered the systematic practice of enforced disappearance to be a violation of international law and that led to the application of the principle of international jurisdiction. It also established the principle that victims and their families had a right to redress and to adequate compensation. His Government agreed that an act of enforced disappearance should be considered a continuing offence as long as the facts concerning the disappearance of the victim remained unclarified.

77. In conclusion, his delegation hoped that the Commission would recommend the adoption of the draft declaration.

78. Mr. PINTER (Czech and Slovak Federal Republic) said that torture was one of the worst kinds of human rights violations, and the Commission must do its utmost to fight against it and all its manifestations wherever they occurred.

79. His delegation welcomed the finalization by the Working Group of the draft declaration on the protection of all persons from enforced disappearances. It was to be hoped that that draft declaration would be approved by the Commission and adopted by the General Assembly, so that it could make an effective contribution to the protection of persons throughout the world from such abuses.

80. His Government welcomed the report of the Special Rapporteur on questions relevant to torture (E/CN.4/1991/17) and supported its recommendation that States which had not yet done so should ratify as soon as possible the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was important to ensure not only ratification but also implementation of the Convention, which the Czech and Slovak Federal Republic had signed on 8 September 1986 and ratified on 7 July 1988. In November 1991, the Committee against Torture had considered the initial report of his country and his Government would do its utmost to comply with the Committee's recommendations.

81. The draft optional protocol to the Convention against Torture would represent a major step forward in preventing that abuse. The idea of visits to places of detention as a means of providing better protection against the torture of persons deprived of their liberty was in keeping with the growing preventive role of the United Nations in ensuring respect for human rights. It was to be hoped that the Commission would conclude its consideration of the draft optional protocol at its current session.

82. Mr. PALACIOS SERRANO (Observer for Spain) said that, despite the Convention against Torture, monitoring machinery and an international Code of Conduct for Law Enforcement Officials, the practice of torture continued to be a universal phenomenon. Spain had adhered to the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, in the framework of the Council of Europe. It had ratified the Convention against

Torture and recognized the competence of the Committee provided for in article 22 of that instrument to receive and consider communications from individuals.

83. The judiciary constituted the last bastion for the effective protection of human rights and, consequently, for the prevention of torture, and it must remain independent if the full enjoyment of human rights was to be ensured.

84. At the national level, the responsibility for eliminating that practice must be borne by all, from government authorities to the individual. It was essential to investigate even the slightest evidence that torture was being used, to denounce and punish the guilty parties, to educate the segments of society most likely to resort to violence and to help, rehabilitate and compensate the victims of such abuses.

85. His delegation commended Mr. Chernichenko and Mr. Treat for their report on the right to a fair trial: current recognition and measures necessary for its strengthening (E/CN.4/Sub.2/1991/29). The material it contained constituted an important step forward that might serve as a guideline for the administration of justice.

86. His Government welcomed the report of the Working Group on Arbitrary Detention (E/CN.4/1982/20) and supported its adoption of an urgent action procedure.

87. His Government hoped that the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was designed to establish a system of visits by a committee of experts to places of detention within the jurisdiction of the States parties to the protocol, could be approved at the current session of the Commission. It endorsed the draft declaration on the protection of all persons from enforced disappearances, commended the Working Group on Enforced or Involuntary Disappearances on its work and supported its working methods and investigations.

88. Mr. AKTAN (Observer for Turkey) said that many non-governmental organizations (NGOs) were biased in their reporting. They had a tendency to disregard the terrorist nature of the warfare being waged by what were often called "armed opposition groups" and even ignored the victims of terrorism. Such terrorist groups were even referred to as "political opposition groups", and those who supported the acts of murder committed by those groups were "political prisoners". Moreover, the NGOs frequently condemned the atrocities perpetrated by so-called "armed opposition groups" in a very perfunctory way, regarding them not as human rights violations but as violence that must be defused by Governments. Evidence of external material support for "armed opposition groups" was dismissed by the NGOs on the grounds of their political neutrality. The only remedy they proposed was the establishment and efficient administration of an independent and impartial judiciary, together with the strict respect for the rule of law in the countries concerned.

89. As a result, in countries where ethnic and ideological terrorist groups had been active, the human rights performance of the Governments concerned had been assessed by measuring the behaviour of the security forces and the

judiciary, while overlooking the savage terrorist violence directed against them and the population they were duty-bound to protect. That one-sided approach was tantamount to condoning terrorism and was therefore in breach of international law. Such an approach not only did not serve the cause of human rights but had even become a major obstacle to achieving improvement in that area.

90. Curiously enough, the reports of many NGOs often contained no mention at all of democracy, democratic rights or democratic institutions and processes. Likewise, the agenda of the Commission made no reference to democracy. Yet an independent and impartial judiciary could not survive outside the democratic framework. By placing special emphasis on ethnic rights or on respect for the rights of members of "armed opposition groups" and by ignoring the full democratic rights of the entire population or the majority thereof, the international community was encouraging the dismemberment of the States.

91. By taking sides with one party against the other, NGOs were not defending democracy, but were supporting ethnic and ideological violence. It must be understood that terrorism, by its very nature, could not serve lofty ideals. It was a mistake to think that terrorists who killed indiscriminately one day would the next day establish a democratic regime based on respect for human rights.

92. His delegation drew attention, in that context, to the preamble to the Universal Declaration of Human Rights, which stated that every individual and every organ of society must strive to promote respect for human rights. Clearly, that applied not only to States but to terrorists as well. The NGOs must therefore oppose and condemn terrorism and its supporters and must defend their victims.

93. Mr. BRODY (International Commission of Jurists), speaking on behalf of Amnesty International, the Latin American Federation of Associations of Relatives of Disappeared Detainees, the International Federation of Human Rights, the International League for Human Rights and the International Human Rights Law Group as well as his own organization, said that the draft declaration on the protection of persons from enforced or involuntary disappearances was long overdue. An instrument was urgently needed which set forth the mechanisms which States should put into place to prevent further disappearances from occurring.

94. The draft declaration fell short in several respects of the proposals put forward by the International Commission of Jurists and other non-governmental organizations, which would have preferred that the qualification of disappearances as a crime against humanity be more absolute and that article 14, which urged States to exercise universal jurisdiction over persons involved in disappearances be cast in more explicit language. Nevertheless, the current draft did set forth a realistic and constructive approach to that pervasive phenomenon.

95. The consensus solutions reached in the Working Group, while not entirely saitsfactory, set a high standard: disappearances were absolutely prohibited at all times; detainees must be held in officially recognized places of detention; relatives had the right to go to court to locate detainees; States

must thoroughly investigate complaints of alleged disappearances and protect relatives and witnesses who complained; disappearances were considered to be a continuing crime; and no special amnesty laws could exonerate perpetrators. Adoption of the draft declaration by the Commission and the General Assembly would thus be a milestone in the campaign against that terrible crime.

96. Continuing on behalf of the International Commission of Jurists alone, he said that his organization had strongly supported the initiative at the thirty-seventh session of the Commission to set up a working group to investigate cases of arbitrary detention throughout the world. The Working Group had rightly followed United Nations precedent in concluding that a detention was arbitrary if it was either on grounds or in accordance with procedures other than those established by law or under the provisions of a law the purpose of which was incompatible with international human rights.

97. It had also rightly determined that its mandate to investigate cases implied reaching some form of conclusion as to whether a particular detention was arbitrary or not. On one point, however, his organization disagreed. In its tentative methods of work, the Working Group stated, that if the person whose case had been submitted had been released, for whatever reason, the case was closed (E/CN.4/1992/20, para. 14 (a)). That decision, by preventing the Working Group from reaching conclusions on such cases, essentially prevented cases and even patterns of short-term arbitrary detention from coming before the Working Group. It was to be hoped that the Working Group would re-examine that unnecessarily narrow reading of its mandate.

98. Turning to draft resolution III submitted to the Commission by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/1992/2), which called on all States to establish and to maintain at all times a detainee's right to challenge the legality of his or her detention, that right, often known as habeas corpus, was critical to those deprived of their liberty and protected not only the personal freedom of a detainee but also often ensured that his or her life and physical integrity were respected.

99. Thousands of forced disappearances could have been avoided if the writ of habeas corpus had been effective and if judges had investigated the detention by going personally to the places of detention. Nevertheless, many States suspended that key right in times of emergency. His organization had found, in its 1983 study, that the principal factor implicated in abuse of detention powers was the suspension of the right to challenge the legality of detention in a court of law.

100. Under article 4 of the International Covenant on Civil and Political Rights, the right to challenge the legality of detention was not expressly made non-derogable. While it was doubtful whether derogation from that right was ever "strictly required by the exigencies of the situation" (art. 4, para. 1, of the Covenant), the weakness of international review mechanisms deprived that theoretical limitation of much of its practical force.

101. The Sub-Commission's proposal was consistent with the 1987 advisory opinion of the Inter-American Court of Human Rights, which had ruled that habeas corpus was not derogable under the Inter-American Convention, as it was

essential for the protection of the rights and freedoms whose suspension the Convention prohibited. His organization therefore urged the Commission to adopt the draft resolution on habeas corpus.

102. The report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1991/30) made important recommendations concerning the advisory services programme and set forth in detail obstacles to the independence of judges and lawyers. The Commission had before it a draft resolution of the Sub-Commission authorizing a further report by Mr. Joinet on the subject (draft resolution VII), and his organization urged the Commission to adopt it.

103. The International Commission of Jurists supported the proposal by Costa Rica to create an inter-sessional working group to examine the question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The meeting rose at 12.55 p.m.